



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,435	12/23/2003	John Baranowski	016354.0208	7528

24735 7590 07/13/2006

BAKER BOTTS LLP  
C/O INTELLECTUAL PROPERTY DEPARTMENT  
THE WARNER, SUITE 1300  
1299 PENNSYLVANIA AVE, NW  
WASHINGTON, DC 20004-2400

EXAMINER

KUMAR, RAKESH

ART UNIT	PAPER NUMBER
----------	--------------

3654

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/743,435	BARANOWSKI, JOHN	
	Examiner	Art Unit	
	Rakesh Kumar	3654	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on Application filed 12/23/2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/8/04; 3/26/06</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 10/743,425, claims 1-20 of copending Application No. 10/743,426, claims 1-10 of copending Application No. 10/743,440, claims 1-80 of copending Application No. 10/601,669, claims 1-40 of copending Application No. 10/601,674 and claims 1-31 of copending Application No. 10/601,670. Although the conflicting claims are not identical, they are not patentably distinct from each other

because they all have a dispenser comprising one of more dispensing paths, dispensing chute, dispensing heads, a sensing unit, holding chamber, a star wheel, controller for regulating said dispenser, rotating said dispensing paths with a rotational drive and a vibrating device for agitating said dispensing paths.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "119" has been used to designate both "container chute" (e.g. spec. page 17 line 30) and pivot (e.g. spec. page 13 line 24). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "106" has been used to designate both "bulk delivery apparatus" (e.g. spec. page 7 line 7) and "feeder bowl vibration device" (e.g. spec. page 10 line 16). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "101b" and "104b". Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet"

or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. Referring to claims 7 and 12. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "control unit" (claim 7 line 4) and the "one strainer" (claim 12 line 1) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 1 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Referring to claim 1. Claim 1 recites the limitation “a dispensing chute” on line 5. It is unclear as to which dispensing chute is being referred to as the specification only disclose a “container chute (119)” and a “diversion chute (120)”. It is generally understood and broadly construed by the Office to mean the “a dispensing chute” is the “container chute (119)”. Appropriate action is required.

Referring to claim 11. Claim 11 recites the limitation “to the feeder bowl” on line 3. It is unclear as to what is meant by a range of physical characteristics to the feeder bowl. It is generally understood and broadly construed by the Office to mean the “of the feeder bowl”. Appropriate action is required.

Referring to claim 13. Claim 13 recites the limitation “means for delivering” on line 5. It is unclear as to whether the “means for delivering” as disclosed in the claim is

Art Unit: 3654

referring to the delivery means to deliver articles to the feeder bowl or the a means to deliver articles to the dispenser heads which as disclosed in the claim can comprise a conveyor. It is generally understood and broadly construed by the Office to mean the "means for delivering" articles to the feeder bowl can comprise a conveyor. Appropriate action is required.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

10. Claims 1-3 and 6-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Mikami et al. (U.S. Patent Number 4,398,612).

Referring to claims 1-3 and 6-11. Mikami discloses a bulk or a single item dispensing system comprising;

A dispenser (Figure 4) comprising one or more dispensing paths (3) for dispensing items;

and one or more dispensing heads (14 and 15), wherein each of the one or move dispensing heads (14 and 15) receives items from at least one of the one or more dispensing paths (3) and comprising;



a dispensing chute (chute for members 14 and 15) for directing a first plurality of the received items toward the dispenser, wherein at least one physical characteristic of each of the first plurality of the received items is within a predetermined range of physical characteristics (weight);

and a diversion chute(20) for directing a second plurality of the received items away from the dispenser;

wherein the system further comprises one or more sensing units (8,8',13 and 14), wherein each of the one or more sensing units (8,8',13 and 14) measure the at least one physical characteristic (weight) of at least one portion of the items dispensed from at least one of the one or more dispensing paths (3),

wherein each of the dispensing heads (13 and 14) receives items from at least one of the dispensing paths (3) via at least one of the sensing units (8,8',13 and 14);

each dispensing head (13 and 14) comprises a holding chamber (Col. 4 and 30-50) directing the path of the items by the opening and closing of members (17 and 18);

the dispenser comprising a vibration device (7) for vibrating the dispensing paths, a second vibration device (2) for vibrating a feeder bowl (1) controlled by a control unit (Figure 6-9).

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3654

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 4, 5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mikami as applied to claim 1 above, and further in view of Hudson (U.S. Patent Number 3,782,878).

Referring to claims 4,5 and 12. Hudson discloses a rotary dispenser (Figure 2) comprising a rotatable star wheel (21; Col. 2 line 30) comprising a plurality of container-receiving grooves (21a) for positioning containers (20; Figure 1-3) in alignment with one of the dispensing heads (15, strainer),

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the apparatus of Mikami and include a star wheel as taught by the teaching of Hudson because the apparatus could position containers in alignment to be filled as the items are dispensed from the dispenser.

13. Claim 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Mikami in view of Hudson as applied to claim 12 above, and further in view of Simionato (U.S. Patent Number 5,613,590).

Referring to claim 13. Simionato disclose a dispenser apparatus comprising a conveyor as a delivery means (Figure 2).

Art Unit: 3654

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the apparatus of Mikami in view of Hudson and include a conveyor as a delivery means to deposit items onto the feeder bowl as taught by Simionato because it would prevent jamming of the apparatus.

### ***Conclusion***

14. The prior art made of record and not specifically relied upon is considered pertinent to applicant's disclosure in this application are cited in the document labeled "Notice of References Cited" along with this Office.


15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rakesh Kumar whose telephone number is (517) 272-8314. The examiner can normally be reached on 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3654

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RK  
June 9, 2006

  
GENEVO. CRAWFORD  
SUPERVISORY PATENT EXAMINER